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THE SUPREME COURT OF WASHINGTON

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ATTORNEY GENERAL
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FILED
SUPREME COURT
STATE OF WASHINGTON
2006 MAY -5 P 3:42
C.J. MERRITT
CLERK

DANIEL MADISON, BEVERLY
DuBOIS, and DANNIELLE GARNER,

Respondents,

v.

STATE OF WASHINGTON,
CHRISTINE O. GREGOIRE, Governor,
and SAM REED, Secretary of State, in
their official capacities,

Appellants.

NO. 78598-8

RULING

Daniel Madison, Beverly DuBois, and Dannielle Garner brought this action against the State (and the Governor and Secretary of State) to establish their right to register to vote. Each of the plaintiffs has been convicted of a felony. Each has now completed all of the terms and conditions of his or her resulting sentence, except for full payment of what are called "legal financial obligations." Were it not for those remaining legal financial obligations, which the plaintiffs are financially unable to pay off immediately, they would be entitled to restoration of their civil rights, including the right to vote.

The King County Superior Court granted summary judgment to the plaintiffs, finding the election statutes to be unconstitutional insofar as they prohibit from voting "felons who have satisfied the terms of their sentences except for paying legal financial obligations, and who, due to their financial status, are unable to pay

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their legal financial obligations immediately.” The court’s order also specifically provides that the named plaintiffs “are entitled to register to vote and are eligible to sign the oath required by RCW 29A.08.230.”

The State has appealed the superior court’s order directly to this court, and has moved for a stay pending appeal. The plaintiffs, who apparently may seek to cross appeal from the order, oppose any stay. I set consideration of the state’s motion on an expedited basis, with telephonic argument on May 4, 2006. I also asked counsel for the parties to consult and propose an accelerated briefing schedule that would permit the appeal to be heard on the merits in the last week of the court’s Spring Term.

Taking first the matter of an accelerated hearing, I approve and adopt the briefing schedule proposed by counsel: appellants’ opening brief due May 16, 2006; respondents’ (and cross-appellants’) opening brief due May 30, 2006; appellants’ (and cross-respondents’) reply brief due June 6, 2006; and cross-appellants’ reply brief due June 13, 2006.¹ The case will be heard on June 27 or 29, 2006.

As to the State’s motion for a stay, I deny the motion, but without prejudice to renew it as part of the State’s briefing on the merits. I agree with the State that the issues presented by the appeal are debatable. *See* RAP 8.1(b)(3)(i). But I am not persuaded that the State’s injury if a stay is not imposed, at least over the short term, outweighs the plaintiffs’ injury if a stay were to be imposed. *See* RAP 8.1(b)(3)(ii). In reaching this conclusion I note that it is not clear how the superior court may actually enforce its order as to anyone other than the named plaintiffs. Nor do the pleadings submitted to date by the Secretary of State provide much concrete information about

¹ This schedule assumes that a cross-appeal is proper in this case. That seems to me a questionable proposition, as I explained to counsel in oral argument, but I do not decide it here. If the court concludes that none of the plaintiffs-respondents can qualify as a cross-appellant, the court can simply disregard the June 13 brief.

the practical implications of complying with the court's order.² Given these concerns and uncertainties, I am not persuaded that a stay should be entered at this time.

Accordingly, the motion for a stay is denied, but without prejudice to renew it in briefing and argument on the merits.



COMMISSIONER

May 5, 2006

² The State's counsel provided additional information orally, but also allowed that, at least for the present calendar quarter, it would be virtually impossible to change the response to the order that the Secretary has already adopted.